

**PROPOSED AMENDMENTS TO THE CALIFORNIA CODE OF REGULATIONS**  
**TITLE 23. WATERS**  
**DIVISION 3. STATE WATER RESOURCES CONTROL BOARD**  
**CHAPTER 29: CONTRACTING WITH PRIVATE ARCHITECTURAL, LANDSCAPE**  
**ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LAND SURVEYING, OR**  
**CONSTRUCTION PROJECT MANAGEMENT FIRMS.**

**NOTICE OF PROPOSED RULEMAKING**

**MARCH 2001**

**STATE OF CALIFORNIA**  
**STATE WATER RESOURCES CONTROL BOARD**  
**DIVISION OF CLEAN WATER PROGRAMS**

## **NOTICE OF PROPOSED RULEMAKING**

### **TITLE 23. WATERS DIVISION 3. STATE WATER RESOURCES CONTROL BOARD CHAPTER 29. CONTRACTING WITH PRIVATE ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LAND SURVEYING, OR CONSTRUCTION PROJECT MANAGEMENT FIRMS**

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (SWRCB) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### **PROPOSED REGULATORY ACTION:**

The SWRCB proposed to adopt chapter 29, division 3, title 23 of the California Code of Regulations (commencing with section 3870), relating to engaging the professional services of a private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firm.

#### **WRITTEN COMMENT PERIOD:**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the SWRCB. The written comment period closes at 5:00 p.m. on April 30, 2001. The SWRCB will only consider comments received by that time at the addresses below. The SWRCB will only consider comments regarding the proposed action. Written comments must be directed to:

Dee Dee Fiedler, Regulations Coordinator  
State Water Resources Control Board  
Division of Clean Water Programs  
Underground Storage Tank Cleanup Fund  
P. O. Box 944212  
Sacramento, CA 94244-2120

Comments may also be hand-delivered to 1001 I Street, 17<sup>th</sup> floor, Sacramento, CA 95814, or e-mailed to [dfiedler@cwpswrcb.ca.gov](mailto:dfiedler@cwpswrcb.ca.gov) or faxed to (916) 341-5806.

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To be added to the mailing list for this rulemaking, and to receive notification of updates of this rulemaking, please leave a message at (916) 341-5670 (voice mail). Individuals who receive this notice by mail are already on the mailing list.

**PUBLIC HEARING:**

The SWRCB has not scheduled a public hearing on the proposed action. However, interested parties may make a written request for a hearing no later than 5:00 p.m. on April 16, 2001 which is fifteen (15) days before the end of the 45-day comment period.

**AUTHORITY AND REFERENCE:**

Authority: Section 4526, Government Code

Reference: Sections 4525 – 4529.10, 4529.12, 14837 and 87100, Government Code; Sections 999, 999.2 and 999.3, Military and Veterans Code; Sections 1102, 10115, 10115.1 and 10115.2, Public Contract Code; *Monterey Mechanical Co. v. Wilson* (9<sup>th</sup> Cir. 1997) 125 F.3d 702, 706 fn. 5, rehearing denied (1998) 138 F.3d 1270.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

In order for a state agency to engage the professional services of a private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firm, section 4526 of the Government Code requires a state agency to adopt regulations. The regulations must set forth procedures that assure that the services are engaged on the basis of demonstrated competence, qualification for the type of service to be performed, and at fair and reasonable prices to the public agency. In addition, the regulations must assure the maximum participation of small business firms and must prohibit practices that might result in unlawful activities or a conflict of interest.

Recently enacted Proposition 35 provides, in part, that state agencies shall be allowed to contract with qualified private entities for architectural and engineering services, and the services shall be procured pursuant to a fair, competitive selection process. (Ballot Pamp., Gen. Elec. (Nov. 7, 2000) text of Prop. 35, p. 65.)

The proposed regulations are intended to satisfy these directions by establishing procedures for selecting private professional services firms. The procedures include establishment of criteria, announcement, selection, value estimation, negotiation, contract amendment, contracting in phases, and prohibition of unlawful practices.

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The effect of the proposed regulations is to establish procedures that the SWRCB and Regional Water Quality Control Boards (RWQCB) will use to engage the services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms.

**MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS/FISCAL IMPACT**

The SWRCB has determined that the proposed regulations do not impose a mandate on local agencies or school districts. Additionally, the SWRCB has determined that the proposed action will not result in cost or savings to any state agency or any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code, other nondiscretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State.

**EFFECT ON HOUSING COSTS :**

The SWRCB has determined that the proposed action will not have a significant effect on housing costs.

**ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES :**

The SWRCB has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON CREATION OR ELIMINATION OF JOBS , EXISTING OR NEW BUSINESSES IN THE STATE OF CALIFORNIA :**

The proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within the State.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES :**

The SWRCB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESSES :**

The SWRCB has determined that the proposed regulatory action does affect small businesses.

#### **CONSIDERATION OF ALTERNATIVES**

The SWRCB must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The SWRCB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the comment period.

#### **CONTACT PERSONS :**

Requests for copies of the text of the proposed regulations, the Statement of Reasons, or other information upon which the rulemaking is based, should be addressed to Dee Dee Fiedler at (916) 341-5670 or Lola Mello at (916) 341-5845, Division of Clean Water Programs, UST Cleanup Fund, P. O. Box 944212, Sacramento, CA 94244-2120. For information regarding the substance of the proposed rulemaking, contact Therese Barakatt, Office of Chief Counsel, State Water Resources Control Board, P. O. Box 100, Sacramento, CA 95812, telephone (916) 341-5186.

The documents relating to this proposed action may also be found on the UST Cleanup Fund's website at the following address:

<http://www.swrcb.ca.gov/cwphome/ustcf/fundhome.htm>

#### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS :**

The SWRCB has prepared an Initial Statement of Reasons for the proposed action. The statement includes the specific and the factual basis for determining the necessity of each regulatory interpretation or requirement. The statement, the express terms of the proposed regulations, and all information on which the proposals are based are available from the agency contact person named in this notice.

The rulemaking file is available for inspection and copying throughout the rulemaking process at the Division of Clean Water Programs, 1001 I Street, 17<sup>th</sup> floor, Sacramento, California. As of the date that this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations, and the Initial Statement of Reasons.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS :**

The Final Statement of Reasons will be made available at the end of the rulemaking period from the agency contact person named in this notice.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT:**

The SWRCB may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The SWRCB may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In such event the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment, at least 15 days before it is adopted.